



United States Department of State

Washington, D.C. 20520

May 12, 1995

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Dear Chairman Hundt:

On May 11, 1995, representatives of the European Commission formally presented to the Department comments on the Federal Communication Commission's Notice of Proposed Rule-Making in IB Docket No. 95-22 regarding Market Entry and Regulation of Foreign-affiliated Entities. They requested that the Department transmit the comments to you with a request that the comments be made a part of the proceedings and put in the public record. The comments of the European Commission are attached hereto for appropriate inclusion in the record of this proceeding.

Sincerely,

Richard C. Beaird
Senior Deputy United States Coordinator
International Communications and Information Policy

Enclosures:
As Stated.

Reed Hundt
Chairman,
Federal Communications Commission,
Suite 814,
1919 M Street, N.W.,
Washington, D.C. 20554.

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EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

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1. The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the Notice of Proposed Rule-Making (NPRM) adopted by the Federal Communications Commission on 7 February 1995 and released on 17 February 1995 regarding Market Entry and Affiliation of Foreign-Owned Entities in the United States. We would also like to comment on the proposals currently before Congress for the further liberalisation of the domestic telecommunications market.
2. The European Commission welcomes the opportunity to comment offered by the FCC Notice and wishes to express its appreciation that the FCC has taken this initiative to clarify the criteria in accordance with which operating licences under S. 214 of the Communications Act 1934 will be granted. As the FCC rightly points out, the case-by-case review of foreign carrier applications has caused uncertainty about access to the United States market due to the lack of a clear standard for evaluating applications by foreign carriers. The NPRM is thus a positive step to remedying these problems.
3. We note that the main issue raised by the FCC is the application of S. 214 and S. 310 of the Communications Act 1934 to international communications between the US and foreign countries. In this context, we would like to point out that the US market is not yet fully open to competition. The EC market is opening up with growing participation by US carriers. Furthermore, the EC is rapidly moving towards a fully open domestic telecommunications regime. There is thus a need for change in the regime for domestic telecommunications in the US. We welcome the current efforts within the United States to effect this change.
4. The FCC states that its NPRM is intended to further three basic goals: the promotion of effective competition in the global market for telecommunications services; the prevention of anti-competitive conduct in the provision of international services and the opening of foreign telecommunications markets. The FCC has tentatively concluded that these goals are incompatible with allowing unrestricted access of foreign carriers to the US market. The FCC has requested comment on whether these goals can be furthered by including an "effective market access test" as an "important element" of its consideration of the public interest in granting licences for international facilities-based licences under S. 214 of the Communications Act 1934.

5. The Commission believes that an analysis of how the goals set forth by the FCC can best be achieved must begin with an appreciation of the dramatic developments taking place in telecommunications markets world-wide. Telecommunications markets are under-going rapid change, due in part to technological development and in part to the realisation that liberalisation is in the public interest. It follows that today, the possibilities for market access in the global telecommunications market are very different from even a few years ago, and that in the very near future they will be more different still. Further liberalisation of telecommunications markets is now a certainty. Regulators must anticipate these changes if they are not to be surpassed by market realities.

6. This trend to further liberalisation has been given concrete form within the European Community by way of a clear time-table at Community-level for the full liberalisation of all telecommunications services and infrastructure by 1 January 1998, subject to possible transitional periods for certain Member States with small or less developed networks in order for them to achieve the necessary structural adjustments. By that date the present liberalisation of value-added services, data transmission services, closed-user group and corporate communications services will be completed by the liberalisation of those basic services which are currently reserved to telecommunications organisations.

At this point in time, a timetable for the introduction and implementation of EC legislation on licensing of telecommunication operators and interconnection is being drawn up by the Commission and Member States for confirmation by the Council on 13 June 1995. The Commission will present proposals during the latter part of 1995 to be approved by the Council during 1996 and implemented by Member States during 1997. A common EC licensing and interconnection regime will thus be operational by 1 January 1998, with the exception of Spain, Portugal, Greece and Ireland where the legislation may not apply until 2003 and a possible derogation for Luxembourg until 2000.

This time-table does not prevent Member States from liberalising more quickly. Indeed, a number of Member States today have already opened all or part of their telecommunications markets to competition, while others are in the process of doing so in parallel with the Community-level time-table.

7. The treatment to be accorded to third country carriers is the subject of on-going consideration within the Community in the context of this liberalisation. It follows that many of the issues raised by the FCC in its Notice of Proposed Rule-Making are relevant to the development of future policy within the Community. However, the European Commission has, to date, not proposed to follow the path, suggested both by the FCC, and by legislative proposals before Congress, of erecting reciprocity-based market entry standards for foreign carriers. Since the EC domestic regime will in the near future be a fully open one, the application of reciprocity requirements for access to the US market is unlikely to assist the creation of additional market access opportunities for US operators in the EC. Rather such a move could increase the support for reciprocity requirements in the EC.

8. Indeed, today many United States carriers are present in the Community market, including carriers which operate under protected conditions in their home markets (see annexed data). The investment undertaken by such companies has been considered to be in the public interest without undue consideration being taken of asymmetries in market opportunities for Community carriers in third country markets. The FCC recognises this: "US wireless service providers' participation in foreign countries' cellular markets has strengthened both US and foreign competitors and resulted in improved services to both foreign and US consumers". Consumers and carriers in the Community have benefited despite the fact that domestic carriers may not have equivalent opportunities in third country markets.

9. As for the goals themselves, the basic premise of the NPRM is one that the European Commission fully shares: additional competition in telecommunications will further the public interest in that consumers will benefit from services at reduced rates and of a higher quality and level of innovation. This has been one of the motivating factors which has led to the decision within the Community to liberalise all basic telecommunications services and infrastructure.

The European Commission welcomes the present efforts within the United States to further liberalise important market segments, such as the local telecommunications market. Such efforts would also contribute to the promotion of effective competition in the global telecommunications markets.

10. We agree with the FCC that effective competition in telecommunications presupposes the existence of a regulatory framework guarding against anti-competitive conduct. The United States' current telecommunications regime comprises substantial competitive safeguards aimed at ensuring effective competition. In its policy proposals for the full liberalisation of the Community telecommunications market, the European Commission equally recognises that achieving effective competition implies the prevention of anti-competitive conduct, whether through the application of the general competition rules or through specific provision on issues such as interconnection. This is significant not only in encouraging market entry, but also in

addressing the new players and new co-operative ventures which will shape the emerging telecommunications markets.

11. However, the FCC concludes that allowing unrestricted entry of foreign carriers to the US market would give rise to a potential risk of anti-competitive conduct which is incompatible with effective competition. This potential risk is said to result not only from "asymmetries" in market access opportunities between the US and third countries, but also from the absence of adequate competitive safeguards in those countries. We believe that a potential risk of anti-competitive conduct is insufficient to warrant a pre-emptive policy of conditioning access to the US market on the existence of effective market access in a given third country for US carriers. As has been noted above, significant competitive safeguards exist in the US. Application of these safeguards does not require examination of the equivalence of market opportunities as proposed by the FCC as part of its effective market access test.

12. We welcome the FCC's acceptance that requiring foreign countries to provide essentially identical competitive opportunities to those in the United States would not further the public interest as it would be next to impossible to meet.

13. On the other hand, we note that the effective market access criteria are not exhaustive and that the FCC is careful to point out that other factors may outweigh one or all in its eventual determination of the public interest. Nonetheless, the very discretion retained by the FCC in determining the respective weight of the various public interest criteria enumerated in the NPRM may hinder the initial objective of increasing the predictability of approval procedures for foreign carriers under S. 214, which might become yet more complex and lengthy. The criteria outlined by the FCC in paragraph 45 are not sufficiently clear to remove this risk. For example, whether a foreign carrier is a government or non-government entity is relevant only to an examination of the separation of regulatory and operational functions within government. Government ownership should not be at stake.

14. We would prefer approval procedures, whether under S. 310 or S. 214, to proceed automatically, unless a clear and immediate anti-competitive threat counter to the public interest can be positively demonstrated. The clear wording of S. 310 of the Communications Act 1934 supports the conclusion that the burden of proof lies with the FCC in demonstrating that a waiver of S. 310 is not in the public interest. Foreign carriers ought not to be obliged to demonstrate positively that such a waiver is in the public interest.

15. We further note that the FCC does not address the question of the time-scale within which a response to requests for authorisations must be given. The European Commission would encourage the FCC to consider the introduction of a set time-limit following the expiry of the comment period by which applicants should be informed whether their application is to be granted or refused. Such a time-limit would further help to mitigate the consequences of the FCC's case-by-case review of applications.

16. The FCC's final goal is to encourage foreign governments to open their telecommunications markets. In the context of the liberalisation of the Community telecommunications market, the European Commission has consistently underlined the importance of ensuring comparable and effective market access to third countries' telecommunications markets. Equally consistently, we have pointed to the negotiations on basic telecommunications currently underway in the World Trade Organisation, as the most appropriate forum in which to press third countries to liberalise their telecommunications markets.

17. We are concerned about the possible repercussions of the introduction of a reciprocal market entry standard in the United States, whether by new regulation as proposed by the FCC or by new law. This is especially true given the timing of the proposal. As has been described above, full liberalisation within the Community will be accomplished by 1 January 1998. Moreover, negotiations on basic telecommunications in the World Trade Organisation are currently addressing market access in the sector. The FCC itself recognises that the proposed effective market access test would limit new foreign carrier entrants.

18. Governments, not carriers, determine telecommunications policy. It follows that only negotiation among governments can resolve market access issues. This is the proper role of the on-going negotiations under the auspices of the World Trade Organisation. The European Commission believes that attempting to exert indirect pressure on governments to liberalise their telecommunications markets by subjecting carriers to reciprocity-based licensing procedures is an inefficient way in which to achieve a legitimate policy goal. Moreover, the erection of reciprocity-based market access barriers in the course of WTO negotiations is arguably an attempt to improve the US' negotiating position and leverage, which is in breach of, at least, the spirit in which parties have agreed to conduct multilateral negotiations in this sector.

19. In conclusion, the European Commission while supporting the underlying aims of the Notice of Proposed Rule-Making, questions whether the proposed effective market access test is the most efficient means by which these aims can be furthered. The introduction by the United States of a reciprocity-based market access test in the course of the current World Trade Organisation negotiations, whether through new regulation as proposed by the FCC or through new law, would have an undoubtedly negative effect. The likelihood of a successful conclusion to negotiations on the basis of most-favoured-nation treatment would be jeopardised. The expression by a major trading partner of a clear preference for bilateral over multilateral solutions might detrimentally influence countries currently liberalising their telecommunications markets. The opportunity offered by the current negotiations to negotiate the removal of market access restrictions together could well be lost.

20. The Delegation of the European Commission requests that this Note Verbale be transmitted to the Federal Communications Commission with a request that it be part of the proceedings on this matter and be put on the public record. We would also request that this Note Verbale be transmitted to the Congress.

The Delegation of the European Commission avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C.
May 11, 1995



OVERVIEW OF US OPERATOR ACTIVITIES IN THE EUROPEAN COMMUNITY

AIRTOUCH COMMUNICATIONS (PacTel) :

- * **Belgium** : Airtouch has a 43% stake in Proximus, a wireless (analogue and GSM) player along with Belgacom who has the remaining 57%. Airtouch was selected from 20 candidates to provide technical, operating and marketing support.
- * **Denmark** : Airtouch holds a 20% stake in NordicTel Consortium.
- * **France** : Airtouch is the main technical partner in Infomobile, one of France's paging service providers. Airtouch's stake is 18.5%. The other partners are Bouygues, Veba, Société Générale and Schlumbergel.
- * **Germany** : Airtouch has a 29.3% share in the country's second GSM provider, Mannesmann Mobilfunk.
- * **Italy** : Airtouch has a 10.2% share in the country's second GSM provider, Omnitel Pronto Italia. Other partners include Mannesmann, Bell Atlantic and Olivetti.
- * **Portugal** : Airtouch has a 23% stake in Telcel, the country's first GSM provider, and a 23% stake in Telechamada, the paging service provider.
- * **Spain** : Airtouch has a 25% stake in Sistelcom, the country's paging service provider.
- * **Sweden** : Airtouch has a 51% share in NordicTel, the country's third GSM provider. Airtouch invested 153 million \$.

BELL ATLANTIC :

- * **Italy** : Bell Atlantic has formed a joint venture company (Stream) with STET, in order to target the multimedia market, specifically interactive television.

BELL SOUTH :

- * **Spain** : Reditel, Sistelcom and Airtel have agreed to present a joint offer for the country's second cellular operating license. Bell South is a partner in Reditel.
- * **Belgium** : Bell South has entered into a joint venture with France Telecom to form RAM Mobile Data Belgium.
- * **Denmark** : Bell South has a 29% stake in DMT, Denmark's second GSM provider. There are two other partners. All three are expected to invest roughly 120 million \$ through the year 2000.

- * **France** : Bell South has a 4% share in Cofira, the holding company of SFR, France's second GSM service provider. Bell south also has a 12.5% stake in FTMD, a mobile data service provider. France Telecom is the other shareholder in this company.
- * **Germany** : Bell South has a 21% stake in E-Plus, the country's DCS-1800 service provider.
- * **Netherlands** : Bell South has a 80% stake in RAM Mobile Data. France Telecom holds the remaining 20%. Bell South is also partnering with Holland's second fixed network operator, Telecom II.
- * **United Kingdom** : Bell Sought has a 65% share in RAM Mobile Data. The remaining partners are France Telecom, Bouygues and Telia.

GTE :

- * **Germany** : Deutsche Telekom Mobilfunk (DeTeMobil) has combined its mobile communications network with that of GTE Personal Communications Services, to offer a Global Roam service, enabling users of each network access to GSM services in both countries.
- * **Spain** : GTE was heading Cometa, a consortium bidding for the country's second cellular license. It has since pulled out of the running.
- * **Belgium** : GTE has a 20% share in Belgacom Directory, a telephone directories joint venture. Belgacom owns 80% of the company.
- * **United Kingdom** : GTE Airfone launched a promotion offering free incoming calls in order to encourage people to use the service.

Brittish Airospase Defence has awarded GTE Government Systems a contract for the provision, installation and maintenance of a new air traffic control system at the Warton Aerodrome in the UK.

NYNEX :

- * **Spain** : Nynex has signed an agreement with Telefonica to incorporate Spain into its FLAG network project.
- * **United Kingdom** : Nynex Cablecomms has conducted tests of near video-on-demand and has announced its intention to offer the service commercially during 1995.

- * Nynex and Northern Ireland Electricity (NIE) have joined forces to submit a bid for a cable television franchise covering the whole of Northern Ireland.

SW BELL :

- * **United Kingdom** : Southwestern Bell Cox Cablecomms (SBC) has installed exchanges in its cable television franchise areas and is offering service to roughly 63.000 telephone customers.
- * **France** : Général Des Eaux, SW Bell and Vodaphone have signed a complex series of cross share holding agreements aimed at increasing their share in the French cellular market. The three companies will purchase a share of SFR, the country's second cellular operator.

US WEST :

- * **Spain** : US West is holding talks with Telefonica about the possibility of the two companies forming a global partnership aimed at developing cable television networks.
- * **United Kingdom** : US West acquired Thomson Directories (business directories publisher) in May 1994 for 70 million £.

US West and TCI have set up a CATV company called Telewest, the UK's first CATV firm to be listed on the London Stock Exchange.

Telewest is also setting up a consortium to bid for the first CATV franchise in Northern Ireland.

US West has 50% ownership of Mercury One-2-One.

- * **France** : US West has a 5% stake in Bouygues Telecom, France's first DCS-1800 service provider. Total investment from all partners is estimated to be 2.8 bn \$ over the next 15 years.

US West also has a 7.4% share in Lyonnaise Communications, a CATV company and potential provider of telephone services.

US West has a 25% stake in Interactive Transaction Partners, a multimedia venture with France Telecom and EDS.

- * **Ireland** : It is rumoured that US West plans to bid for a stake in Telecom Eireann.

SPRINT :

- * In **Europe** Sprint provides a range of international value-added network services and virtual private network services. Services are available in the following countries :

Belgium, France, Germany, Italy, the Netherlands, Spain and the United Kingdom.

- * **United Kingdom** : Sprint has entered into agreements with Telecential, a CATV company. The deal will allow Telecential to route its international calls on Sprint's network.

Sprint has signed up City of London Telecommunications and Metropolitan Fiber Systems for its international service. The two companies will go on to offer international simple resale.

- * **Italy** : Sprint has signed a contract with Video On Line, the Italian internet access provider for an exclusive channel linking Cagliari to Washington DC.

MCI :

- * **Germany** : MCI is offering managed data services to local subsidiaries of US firms. In 1994 the company generated roughly 70 million DM in the German market.
- * **United Kingdom** : MCI is offering managed data services.

AT&T :

- * AT&T has partnered with Unisource to offer VPN services to the EUVA, a user organization made up of some of Europe's largest corporations.

AT&T Istel, a wholly owned subsidiary of AT&T in the UK provides data services, managed data services and other value-added network services. Services are provided in the following countries :

Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Spain, Sweden and the United Kingdom.

- * **Germany** : AT&T entered into a joint venture agreement with RWE.
- * **Netherlands** : AT&T to form Uniworld with Unisource. The company will be 40% owned by AT&T and will offer European wide and global telecoms services.
- * **Italy** : AT&T has a 20% stake in Italtel, the telecoms equipment manufacturer.

Annex II

GSM REVENUE SHARE, OPERATORS AND OWNERSHIP

(end 1994)

Country	Revenue Share ¹	Operator	Ownership
Germany	67%	Mannesman Mobilfunk	- DBP Telecom, state owned PTO
		E-Plus Consortium	- 51% Mannesman - 26% AirTouch International - 10% Deutsche Genossenschaftsbank - 5% Cable & Wireless * 7.5% The Central Association of the Automotive Trade - 7.5% others
France	32%	France Telecom	- In 1991, France Telecom became an autonomous operator with budgetary control, still 100% state owned
		SFR	* 90% Cofira (51.5% Compagnie Générale des Eaux, 19.9% Alcatel Alsthom, 7.5% TDF, 4% Bell South, 18% held by several small shareholders, none more than 5%) * 10% Vodafone
		Bouygues Telecom	Consortium partners include : * Bouygues * Cable and Wireless * US West * Veba GmbH * Jean Claude Decaux
UK	5%	Cellnet	* 40% Telecom Securicor Cellular Services Ltd. * 60% BT
		Vodafone	* Vodafone plc
Netherlands	9%	PTT Telecom	* 100% owned by KPN, 30% publicly floated in June 1994
Belgium	36%	Belgacom Mobile	* 75% Belgacom, state owned PTO * 25% AirTouch International
Luxemburg	89%	P&T Luxembourg	* state owned PTO
Austria	1%	PTV Austria	* state owned PTO
Ireland	3%	Eircell	* Telecom Eireann

¹ Revenue share of digital cellular in total mobile market, i.e. digital cellular, analogue cellular, wide area paging, PAMR, mobile data, digital cordless

Italy	2%	Telecom Italia	* 57.7% STET
		Omnitel Pronto	Formed by the merger of two consortia : * 70% Omnitel (51% Olivetti, 16.6% Bell Atlantic, 14.7% Cellular Communications International, 9.7% Unisource, 8% Lehman Brothers) * 30% Pronto Italia (34% AirTouch, 15% Mannesmann AG, 15% Banca di Roma, 36% ERG SPAL et al)

Country	Revenue Share ²	Operator	Ownership
Portugal	75%	TMN	* 66% Portugal Telecom * 34% CPRM (Companhia Portuguesa de Radio Marconi)
		Telecel	* 37.5% Spirito Santo Group * 37.5% Amorim Group * 23% Pacific Telesis * 2% LCC Group
Greece	99%	STET Hellas TeleCommunications AEBE	* 75% STET International SpA * 20% Nynex Network Systems * 5% Interamerican
		Panafon SA	Joint venture involving : * 45% Vodafone * 35% France Telecom Mobile * 10% Intracom * 10% Databank
Spain	no digital cellular as yet		
Sweden	13%	Telia Mobitel	* Telia, 100% state-owned
		Comvik	* 100% Netcom
		Europolitan AB	* 100% NordicTel holdings (51% AirTouch International, 18.5% Vodafone, 7.5% Volvo, 1% NordicTel chairman and president, 22% public float)
Finland	9%	Telecom Finland	* Telecom Finland, state-owned
		Radiolinja	* Consortium of six of Finland's private telephone companies, along with banking, retail and insurance companies.